

**ATTACHMENT 2.**

**Resolution No. 6512**

**Please note:**

Exhibit A referred to in Resolution No. 6512 is **ATTACHMENT 5** (Agreement No. 2004-120-COS) of this packet.

Exhibit B referred to in Resolution No. 6512 is **ATTACHMENT 9** (Continued Disclosure Undertaking) of this packet.

RESOLUTION NO. 6512

RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, ARIZONA APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AND THE CITY CLERK TO ATTEST AN AGREEMENT BETWEEN THE CITY OF SCOTTSDALE AND THE CITY OF SCOTTSDALE MUNICIPAL PROPERTY CORPORATION FOR THE ACQUISITION OF CERTAIN REAL PROPERTY; APPROVING THE CORPORATION'S ISSUANCE OF BONDS TO FINANCE THE ACQUISITION OF SUCH REAL PROPERTY; APPROVING THE FORMS OF DOCUMENTATION FOR THE AGREEMENT AND THE BONDS; AUTHORIZING THE APPROPRIATE OFFICERS OF THE CITY TO EXECUTE THE SAME; AND DECLARING AN EMERGENCY.

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WHEREAS, the City of Scottsdale (the "City") desires to acquire certain real property (the "Property") located in the City as the site for the ASU Scottsdale Center for New Technology and Innovation (the "Center"); and

WHEREAS, the City of Scottsdale Municipal Property Corporation, an Arizona nonprofit corporation (the "MPC") was formed to assist, and has assisted, the City in financing various necessary capital acquisitions and improvements; and

WHEREAS, the MPC has been requested, and has agreed, to issue its excise tax revenue bonds in an amount sufficient to acquire the Property and to sell the Property to the City in consideration of the City's agreement to pay to the MPC amounts required to pay debt service on the MPC's bonds when due; and

WHEREAS, concurrently with the acquisition of the Property, the City intends to enter into a ground lease agreement with an affiliate of the Arizona State University Foundation (the "Foundation"), pursuant to which the Center will be developed; and

WHEREAS, it appears to be in the best interests of the City to proceed with the acquisition and lease of the Property as proposed; and

WHEREAS, in furtherance of the intent and purpose of this Resolution, there have been prepared proposed forms of the following documents:

(a) An Agreement in substantially the form attached hereto as Exhibit A to be entered into by and between the City and the MPC (the "Agreement");

(b) A Trust Indenture to be entered into by and between the MPC and Wells Fargo Bank, N.A., a national banking association, as trustee, providing for the issuance of the MPC's Excise Tax Revenue Bonds, Series 2004A, in an aggregate principal amount not to exceed \$42,000,000 (the "Bonds"); and

(c) A Continuing Disclosure Undertaking in substantially the form attached hereto as Exhibit B to be entered into by the City with respect to the Bonds (the "Continuing Disclosure Undertaking"),

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SCOTTSDALE, ARIZONA AS FOLLOWS:

Section 1. The City hereby approves the MPC's acquisition of the Property and the immediate purchase of the Property by the City pursuant to the Agreement.

Section 2. The terms and provisions contained in the Agreement, including the acquisition of the Property by the City in consideration of the payments to be made by the City pursuant thereto, is hereby approved; and the Mayor and the Clerk of the City are hereby authorized to execute and attest, respectively, the Agreement and deliver the same to the MPC.

Section 3. The covenants and agreements contained in Article IV of the Agreement as to the pledge of and the lien on certain City excise taxes, the maintenance of certain debt service coverage and the restriction on the issuance of further parity obligations secured by such excise taxes are hereby approved and confirmed; and the City Treasurer is hereby authorized and directed to execute and cause to be filed with the Secretary of State of the State of Arizona a financing statement which provides public notice of the pledge of and lien on such excise taxes.

Section 4. The issuance and sale by the MPC of the Bonds to fulfill its obligations pursuant to the Agreement is hereby approved and consented to by the Mayor and City Council.

Section 5. The City hereby agrees, and the Treasurer of the City is hereby authorized, to advance to the MPC up to \$42,000,000 to enable the MPC to acquire the Property for sale to the City, subject to the MPC's agreement to reimburse the City for the amount advanced from the proceeds of the Bonds.

Section 6. The City recognizes that the initial purchaser of the Bonds may be required to comply with Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended (the "Rule"), in connection with purchasing or selling the Bonds as an underwriter. In order to assist the initial purchaser in complying with the Rule, the City will enter into the Continuing Disclosure Undertaking with respect to the Bonds, and the form of Continuing Disclosure Undertaking is hereby approved. The Financial Services General Manager is hereby authorized and directed to execute and deliver the Continuing Disclosure Undertaking for and on behalf of the City and to do all such acts and things necessary to carry out the terms and intent of the Continuing Disclosure Undertaking.

Section 7. The terms and provisions of the documents referred to above are hereby approved.

Section 8. The Mayor of the City, the City Clerk, the City Treasurer and the Financial Services General Manager are each hereby authorized and directed to execute any and all further documents and to take any and all actions that may be necessary or desirable in consummating the transactions contemplated in this Resolution and in the Agreement. Any document specifically approved in this Resolution shall be substantially in the form presented to

the Council, with such additions, deletions and modifications as shall be approved by those persons approving, executing and delivering the same on behalf of the City.

Section 9. It is necessary to utilize an emergency clause with this Resolution (i) to enable the MPC to proceed with the issuance and sale of the Bonds, effective as soon as possible, thereby committing the purchaser of the Bonds to the interest rates on the Bonds, transferring the risk of changes in prevailing market interest rates from the City and the MPC to the purchaser of the Bonds and permitting delivery of and payment for the Bonds to occur as soon as possible and (ii) because the opportunity to purchase the Property is subject to certain time constraints and closing requirements imposed by the seller which are outside the control of the City and the City would be unable to take advantage of this opportunity absent immediate action. The immediate operation of the provisions of this Resolution are therefore necessary for the preservation of the public peace, health and safety of the City. Accordingly, an emergency is hereby declared to exist, and this Resolution shall be in full force and effect from and after its passage and approval by the Council of the City, and is hereby exempt from any referendum provisions of the Constitution and laws of the State of Arizona and the City Charter.

PASSED, ADOPTED AND APPROVED by the Council of the City of Scottsdale, Arizona, on July 6, 2004.

CITY OF SCOTTSDALE, ARIZONA,  
a municipal corporation

\_\_\_\_\_  
By: Mary Manross  
Its: Mayor

ATTEST:

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By: Carolyn Jagger  
Its: City Clerk

APPROVED AS TO FORM:

SNELL & WILMER L.L.P.

By: *William G. Hicks III*